IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

LETTERS PATENT APPEAL No 523 of 1995

in

SPECIAL CIVIL APPLICATION No 1351 of 1982

For Approval and Signature:

Hon'ble MR.JUSTICE A.R.DAVE
and
Hon'ble MR.JUSTICE A.M.KAPADIA

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

STATE OF GUJARAT

Versus

Appearance:

1. LETTERS PATENT APPEAL No. 523 of 1995

MR PRACHHAK, ASST. GOVERNMENT PLEADER for Appellant No.

..... for Appellant No.

MR MR ANAND for Respondent No. 1-7,9-21,23-30,32-34,36-46,48-53,55-

MR DIPAK C RAVAL for Respondent No. 1

RULE SERVED for Respondent No. 8,22,31,35,47,54

CORAM : MR.JUSTICE A.R.DAVE
and

MR.JUSTICE A.M.KAPADIA

Date of decision: 30/07/2003

ORAL JUDGEMENT

(Per : MR.JUSTICE A.R.DAVE)

Being aggrieved by the judgment delivered in Special Civil Application No. 1351/82 dated 25.1.1995 by the learned single Judge of this court, the appellants have filed this appeal.

2. The facts giving rise to the appeal, in a nutshell, are as under:

2.1 The respondents are the original petitioners (hereinafter described as the 'petitioners'). The petitioners had approached this court with a grievance that the pay-scale offered to them was lower than what they were entitled to and it was also contended by them that on the principle of 'equal pay for equal work', they ought to have been paid salary in the pay-scale of Rs. 380-560 with effect from 1.1.1973. The said prayer was made by the petitioners for the reason that the petitioners, who were working in the cadre of Auxiliary Nurse Midwife (for short "ANM"), were doing the work, which was being done by the Staff Nurse/Nurse and though the work done by the ANM and the staff nurse was same, the petitioners were paid lesser salary than what was being paid to the staff nurse. Thus, by invoking the principle of 'equal pay for equal work' the petitioners had prayed that they should be paid salary, which was being paid to the staff nurse.

2.2. It was also submitted by them that though different designations were given to the ANM at different times like nurse, midwife, operation theatre nurse, nurse (TB), etc., the nature of work done by the petitioners was absolutely same and as they were performing duties like the staff nurse, they should have been paid higher pay scale. The petitioners had also tried to compare themselves with nurses working in different departments of the State of Gujarat. The details with regard to salary given to other persons have been given in the petition.

2.3 In reply to the petition, an affidavit-in-reply was filed on behalf of the present appellants-original respondents (hereinafter referred to as "the respondents") stating that the petitioners were working in the cadre of ANM and they were not appointed in the

cadre of staff nurse. It was stated that the nature of work done by the petitioners and the staff nurse was absolutely different. It was also submitted that the requisite qualifications for appointment to the post of ANM and the staff nurse were different. According to the case of the respondents, lesser qualifications were required for appointment to the post of ANM and, therefore, the salary given to the ANM was less than the salary given to the staff nurse. It was the case of the respondents that at the time when the ESI scheme was set up in 1964, there was a shortage of trained and qualified nurses and, therefore, persons like the petitioners, having less qualifications, were appointed in a lower pay scale to assist the trained nurses.

2.4 It was also submitted that for appointment to the post of ANM, it was necessary to undergo 2 years nursing course or 1 1/2 years midwifery course, whereas for appointment to the post of staff nurse it was necessary to undergo 3 years nursing course and have registration as a nurse and midwife.

2.5 It was the case of the respondents that under the ESI Scheme, the petitioners were appointed as midwife or the ANM in the pay-scale of Rs. 120-5-125, which was subsequently revised to Rs. 260-400. At the relevant time, there were only two cadres, (1) Auxiliary Nurse or Midwife, and (2) Staff Nurse or Nurse. It was the case of the respondents that the work of the ANM was to assist the staff nurse and, therefore, the post of staff nurse was a higher post carrying higher pay-scale of Rs. 125-145 whereas the ANM was in the pay-scale of Rs.120-5-125. After hearing the learned advocates, the learned single Judge came to the conclusion that the nature of work done by the ANM i.e. the petitioners, and the staff nurse was similar. The learned single Judge also looked into the pay-scales of staff nurses working under the Directorate of Ayurved and other directorates and after considering the arguments advanced by the learned advocates, the learned single Judge ultimately came to the conclusion that as the nature of work done by the ANM and the staff nurse, was practically the same, the petitioners were entitled to higher pay-scale, which was being given to the staff nurse. The petition was, thus, allowed and the respondent authorities were directed to place the petitioners in the revised pay-scale of Rs. 330-560, the scale which was offered to the staff nurse at the relevant time, with effect from 1.1.1973.

2.6. Being aggrieved by the said judgment dated

25.1.1995, the original respondents, namely, the State of Gujarat and the Director of Medical Services, have filed this appeal.

3. Learned AGP Shri Prachhak appearing for the government authorities has submitted that the petition ought not to have been allowed by the learned Single Judge as the nature of work done by the petitioners i.e. the ANM and the staff nurse was absolutely different. It has been submitted by him that the qualifications required for appointment to the post of ANM, which was popularly known as "midwife" at the time when the ESI scheme had been introduced in the State of Gujarat, and the qualifications required for appointment to the post of staff nurse, which was popularly known as "nurse" at the relevant time, were absolutely different.

4. So as to substantiate his submissions, the learned AGP has submitted that for appointment to the post of ANM, a candidate was required to undergo a certificate course of 2 years, whereas for appointment to the post of staff nurse, general nursing and midwifery course for 3 years or a diploma course was the requisite qualification. It has been, thus, submitted that higher qualification was required for appointment to the post of staff nurse.

5. It has been further submitted by the learned AGP that the nature of work done by the ANM and the staff nurse was also different. It has been submitted by him that there used to be several ANMs but normally there was only one staff nurse in each ESI hospital managed under the ESI scheme and the staff nurse used to be assisted by the ANMs. The staff nurse used to supervise the work of all the ANMs and the ANMs used to assist the staff nurse. Thus, it has been submitted by him that the post of the staff nurse was also higher in status and for the said reason pay of the staff nurse was higher.

6. It has been further submitted by the learned AGP that the work, which was being done under the ESI Scheme by the petitioners and staff nurse cannot be compared with the work done by other nursing staff under different directorates. It has been submitted by him that under Health and Family Welfare Department of the State of Gujarat, there are other directorates. The petitioners were appointed under the ESI Scheme under the Director of Medical Services, whereas other nurses, who have been referred to by the petitioners in the petition, were working under different directorates. The learned AGP has submitted that, the petitioners have made an effort

to compare themselves with the nursing staff of the directorate of Homeopathy and Indian System of Medicine. It has been submitted by him that the nature of work done by the nursing staff working in ayurved hospitals cannot be compared with the nature of work done by the nursing staff working under the ESI scheme, where normally drugs under allopathic system of medicine are administered.

7. It has been further submitted by the learned AGP that normally the function with regard to pay fixation is done by pay commissions and/or by the employers. According to him, the learned single Judge had exceeded his jurisdiction by comparing the work done by the petitioners and other nursing staff working under different departments and by fixing the pay-scale of the petitioners. According to him, even if this court comes to a conclusion that the petitioners are entitled to higher pay-scale, or someone getting the higher pay-scale was doing similar type of work, the proper course open to this court was to refer the matter to the State of Gujarat or to the concerned pay commission so that all relevant factors can be considered by the employer or by the pay commission and thereafter the pay-scale can be appropriately revised. According to him, looking to the law laid down by the Hon'ble Supreme Court in several cases, it would not be open to this court to revise the pay-scale of a particular cadre.

8. It has been, thus, submitted by him that two different cadres, which cannot be compared, had been compared by the learned single Judge while allowing the petition and as that was not just and proper, according to him, the judgment should be quashed and set aside. It has been reiterated by him that the pay-scales of the staff nurse and the ANM were different right from beginning and whenever their pay-scales had been revised, there used to remain some difference between the pay-scales of the ANM and that of the staff nurse. The said fact, according to him, denotes that the staff nurses were performing more duties with more responsibilities and the ANMs, being their assistants, cannot be given the same pay-scale. According to him, if a person, who is rendering assistance to someone, is paid the salary paid to the person who is being assisted, it would bring absurd results. He has, thus, submitted that the impugned order passed by the learned single Judge deserves to be quashed and set aside.

9. On the other hand, learned advocate Shri Dipak Raval appearing for the original petitioners has submitted that the judgment delivered by the learned

single Judge is just, legal and proper. He has also tried to support the reasons given by the learned single Judge by advancing some further reasons. It has been submitted by him that the learned single Judge has rightly come to the conclusion that the nature of work done by the petitioners, namely, the ANM and the staff nurses, is practically the same. It has been also submitted by him that the principle of 'equal pay for equal work' was rightly invoked by the learned single Judge by comparing the nature of work done by persons belonging to both the cadres. It has been also submitted by him that not only the petitioners but nurses performing similar duties under different directorates of the State of Gujarat and even hospitals managed by Ahmedabad Municipal Corporation were getting much higher salary than what was being given to the petitioners. In view of the said fact, it has been submitted by him that the view expressed by the learned single Judge is just and proper and, therefore, the appeal should be dismissed.

10. The learned advocate appearing for the petitioners has relied upon the following judgments :

(1) Kamlakar and others v. Union of India and others, 1999(4) SCC 756

(2) Alvaro Noronha Ferriera and another v. Union of India and others, 1999(4) SCC 408

(3) Employees aof Tannery & Footwear Corporation of India Ltd and another v. Union of India and others, AIR 1991 SC 1367

(4) R.D. Gupta and others v. Lt. Governor, Delhi Admn. and other, AIR 1987 SC 2086

(5) S.A. Dave v. The Director of Ayurveda and ors., S.C.A. No. 3238/79

(6) Randhir Singh v. Union of India and others, AIR 1982 SC 879

(7) Jaipal & others v. State of Haryana and others, AIR 1988 SC 1504

(8) Y.K. Mehta and others v. Union of India and another, AIR 1988 SC 1970

(9) P. Savita and others v. Union of India and others, AIR 1985 SC 1124

(10) State of Gujarat and another v. Natwarlal Babaldas Patel, 1993(1) GCD 377

(11) M.S. Pandya v. State of Gujarat & others, 1997(1) GLR 647

11. We have heard the learned advocates at length and have also considered the facts of the case and the judgments cited by both the learned advocates.

12. Looking to the facts of the case and the law laid down by the Hon'ble Supreme Court on the subject of pay fixation, in our opinion, this court would normally not undertake the work pertaining to pay fixation. For the reasons stated hereinbelow, we are not in agreement with the views expressed in the judgment delivered by the learned single Judge.

13. We have carefully gone through the pleadings and have found that all the petitioners were appointed somewhere in 1964. It is pertinent to note that the petitioners were appointed in the cadre of the ANM, which was also known as Midwife at the relevant time. At the time when the ESI Scheme had been framed by the State of Gujarat, it was decided to have two different cadres of nursing staff, namely, (1) Auxiliary Nurse Midwife, which was also known as Midwife, and (2) Staff Nurse, which was also known as Nurse.

14. Looking to the averments made in the pleadings and the submissions made by the learned AGP, it is clear that the function of the midwife or the ANM i.e., the petitioners, was to render assistance to the staff nurse. It appears that in all hospitals, which were managed under the ESI Scheme, there used to be only one staff nurse or nurse. The said staff nurse was being assisted by midwives or ANMs.

15. Looking to the above-referred scheme of nursing pattern, one cannot say that the staff nurses and midwives or ANMs were performing same type of work. One may say that all nurses do same type of work because they nurse patients. But when we are concerned with service jurisprudence, it would not be just to say that all nurses do same type of work and they should be given the same pay-scale.

16. Looking to the designation of the ANM, which the petitioners are having, it is very clear that they have

to render assistance to staff nurse or nurse. The term "auxiliary" included in their designation denotes that they have to render assistance to the nurse. The term "auxiliary" has been defined in the 'Concise Oxford Dictionary' Ninth Edition, as under :

1. (of a person or thing) that gives help;
2. (of services or equipment) subsidiary, additional;

The said term has also been defined in 'Webster's Encyclopedic Unabridged Dictionary', New Revised Edition, 1988, as under :

1. subsidiary; additional; supplementary;
2. used as a reserve;
3. giving support; serving as an aid; helpful;
4. a person or thing that gives aid of any kind; helper

17. Upon looking at the term 'auxiliary', it is very clear that it denotes rendering of some help or assistance to another person. Thus, the function of the auxiliary nurse would be to render assistance or help to the staff nurse or nurse. If a person is rendering help or assistance to another person, then by no stretch of imagination, it can be said that the person, who is rendering assistance or help is doing the same work as the person to whom he is rendering assistance. The designation clearly denotes that the person holding the designation of the ANM was responsible for rendering help or assistance to somebody who is working as staff nurse or nurse and, therefore, an assistant and the person who is assisted, can never be equated so far as the pay-scale is concerned.

18. If we look at the pay-scale, which was being offered to the ANM and the staff nurse, it is clear that formerly the ANM, i.e. the petitioners, were given pay in the pay-scale of Rs. 120-5-145 whereas the staff nurses were offered salary in the pay-scale of Rs. 125-145. This fact clearly denotes that the staff nurse was in a higher cadre as she used to be assisted by the ANMs. For this reason one can surely come to a conclusion that higher salary given to the staff nurse was justified and consequently lesser salary offered to the ANM i.e. the petitioners cannot be objected to by the petitioners.

19. Let us look at another aspect. If one looks at the qualifications required for appointment to the post of the midwife or the ANM, which had been framed somewhere in 1979, for appointment to the post of the ANM in the Employees State Insurance Scheme, (a) one should not be more than 35 years of age, and (b) should be a Registered Auxiliary Nurse Midwife registered with the Gujarat Nursing Council, whereas for being appointed as staff nurse under the Scheme, (a) one should be not be more than 37 years of age, and (b) should be a registered nurse and midwife, registered with the Gujarat Nursing Council, and (c) should possess adequate knowledge of Gujarati, Hindi and English. Thus, for being appointed as a nurse or a staff nurse, higher qualifications are required.

20. The learned AGP fairly conceded that these recruitment rules were framed in 1979. It has been however submitted by him that even in 1964, when the ESI Scheme had been framed, those who were appointed as ANMs were required to have undergone 2 years auxiliary nurse midwifery course whereas for appointment to the post of staff nurse it was necessary to undergo 3 years course of Registered Nurse & Registered Midwife. Thus, those who were less qualified, that is, who had done 2 years course of Auxiliary Nurse Midwife course, were appointed as ANMs, whereas those who had undergone 3 years R.N. & R.M. course, were appointed as nurse or staff nurse. It is also pertinent to note that after completion of 2 years course of ANM, it was open to the concerned student to study further one year so as to get the degree of R.N. & R.M., and in that event, the person undergoing that additional year's studies would be eligible to become staff nurse or nurse.

21. The above facts clearly denote that higher educational qualification was required for appointment to the post of staff nurse or nurse.

22. From the facts stated hereinabove, it is crystal clear that those who were appointed as nurse or staff nurse were more qualified as they had undergone 3 years study of RN&RM whereas ANMs or midwives had undergone only 2 years course of Auxiliary Nurse Midwife and therefore they were less qualified than staff nurse.

23. The above facts clearly justify lesser pay-scale for ANMs or midwives vis-a-vis staff nurse. If a person is more qualified and another person is less qualified, who is also rendering help and assistance to a person who is more qualified, the person who is less qualified,

namely, in the instant case, ANMs, cannot claim higher pay-scale which is given to a person who is more qualified. The above facts clearly justify the action of the respondent authorities of giving lesser pay-scale to ANMs.

24. Learned advocate Shri Raval appearing for the original petitioners has made sincere efforts to compare pay-scale of the petitioners with pay-scales of persons working in different departments. In our opinion, the nature of work done by other persons in other departments like the Department of Indian System of Medicine and Homeopathy and E.S.I., i.e, the department wherein the petitioners are working, cannot be compared. If two persons are doing different type of work under different employers, the principle 'equal pay for equal work' cannot be invoked. So far as ayurved and homeopathy or Indian system of medicine is concerned, needless to say that they are much different from allopathy. If the nature of work, qualification, cadre and employer are different, in our opinion, the principle of 'equal pay for equal work' cannot be invoked.

25. The learned advocate appearing for the petitioners has also relied upon some orders/letters describing the petitioners as 'Nurse/Midwife' etc. Simply by using a different designation in a communication, which is altogether for a different purpose, a person's cadre would not be changed. Normally, to a layman all those who render assistance to a physician are nurses. Simply because a midwife is described as head nurse or matron or staff nurse, the midwife cannot be treated as a matron or staff nurse as designated in the correspondence. In our opinion, all the correspondence, wherein different designations were used for different petitioners, cannot render any help to the petitioners because the petitioners were not addressed letters in relation to fixation of their pay-scale. The learned advocate appearing for the petitioners was asked to produce the appointment letters, but he was unable to produce appointment letters in the cadre of staff nurse. If the petitioners were not appointed as staff nurse or nurse, then they cannot get salary payable to staff nurse simply because in the course of performance of their duties somebody had addressed a letter to the concerned petitioner addressing the petitioner as a nurse. In our opinion, the said submission of the learned advocate for the petitioners would not render any help to the petitioners for getting higher pay-scale.

26. The learned advocate appearing for the petitioners has relied upon several judgments to substantiate his submissions. He has mainly relied upon the judgment rendered in the case of State of West Bengal and others v. Deb Kumar Mukherjee and others, AIR 1995 SC 1889 to substantiate his argument with regard to 'equal pay for equal work.' In our opinion, the said judgment would not render any assistance to the petitioners because the principle of 'equal pay for equal work' cannot be invoked in this case for the reasons stated hereinabove. He has also cited judgment delivered in the case of Alvaro Noronha Ferriera and anr. v. Union of India and others, (1999) 4 SCC 408. The said judgment was rendered in the case of Judicial officers. Judicial officers of the same cadre working at different places were paid different salary and therefor the Hon'ble Supreme Court directed the concerned authority to pay same salary to all the judicial officers on the principle of 'equal pay for equal work.' In our opinion, the said judgment would not render any help to the petitioners because, in the instant case, the nature of work done by the petitioners and the work done by the staff nurse cannot be compared because the petitioners are subordinates to the staff nurse. They cannot expect salary which is being paid to their superiors.

27. The learned advocate has also relied upon the judgment delivered in the case of Kamlakar and others v. Union of India and others, (1999) 4 SCC 756. The Hon'ble Supreme Court has held in the said case that there should not be any different treatment to those who are direct recruits and promotees in one particular cadre. The Hon'ble Supreme Court has held in the said case that once a person is promoted to a higher cadre, then he gets benefits which a direct recruit in the said cadre gets. There should not be any distinction between a promotee and a direct recruit after a person is promoted to the higher cadre. In the instant case, the petitioners are not promotees. They are unfortunately not having any avenue for promotion but we are not concerned with their promotion and therefore it would not be relevant to refer to the said grievance which has been incidentally ventilated by the petitioners. Looking to the facts of the case, in our opinion, this judgment would also not render any help to the petitioners.

28. Thereafter the learned advocate has relied upon the judgment in the case of Employees of Tannery & Footwear Corporation of India Ltd. and anr. v. Union of India and others, AIR 1991 SC 1367. It cannot be disputed that the Hon'ble Supreme Court has reiterated

the principle of 'equal pay for equal work' in the said judgment. As stated hereinabove, the facts of the instant case cannot help the petitioners because they cannot claim salary or pay-scale, which is being given to the person to whom they are subordinate to. Looking to the said fact, in our opinion, the principle laid down in the said judgment would also not help the petitioners.

29. Thereafter, so as to substantiate the submission with regard to getting equal pay, he has relied upon the judgment delivered in the case of R.D. Gupta and others v. Lt. Governor, Delhi Admn. and other, AIR 1987 SC 2086. In our opinion, the judgment delivered in this case would also not help the petitioners for the reason that the Hon'ble Supreme Court was concerned with persons who were governed by a common seniority list i.e. all persons who were not getting same pay though they were in the same cadre and they were also having a common seniority list. Looking to the facts of the instant case, in our opinion, the law laid down by the Hon'ble Supreme Court in the case of R.D. Gupta (supra) cannot be of any help to the petitioners for the reason that the petitioners and staff nurses belong to different cadres. Not only they belong to different cadres but the petitioners are subordinate to staff nurses as stated hereinabove. Once it is established that the petitioners were working under the staff nurse or nurse and they were rendering assistance to the staff nurse or nurse, in our opinion, the principle of 'equal pay for equal work' cannot be invoked because in that case it cannot be said that persons belonging to these two different cadres were doing the same type of work.

30. The learned advocate has also relied upon the judgment delivered by the Hon'ble Supreme Court in the case of Randhir Singh v. Union of India and others, AIR 1982 SC 879. It also reiterates the principle of equal pay for equal work. In the said case the Hon'ble Supreme Court was concerned with drivers working under different establishments of the government. The Hon'ble Supreme Court came to the conclusion that as persons belonging to different cadres were doing same type of work, the principle of 'equal pay for equal work' would apply. Again, if we look at the facts of the case on hand, the said principle cannot be applied for the reasons stated hereinabove and, therefore, in our opinion, this judgment would also not help the petitioners.

31. He has thereafter relied upon the judgment delivered in the case of Jaipal and others v. State of Haryana and others, AIR 1988 SC 1504, for invoking the

principle of equal pay for equal work. In that case, there was a finding to the effect that the nature of work done by instructors working in adult and non-formal education scheme in Haryana was similar to the work done by the squad teachers in social education scheme of the State. In view of the fact that the nature of work was same, the principle of 'equal pay for equal work' was invoked by the Hon'ble Supreme Court. However, looking to the facts of the instant case, in our opinion, the said ratio would not help the petitioners as the petitioners and staff nurses are working in different cadres as stated hereinabove.

32. The learned advocate has then relied upon the judgment in the case of Y.K Mehta and others v. Union of India and anr., AIR 1988 SC 1970. The Hon'ble Supreme Curt, on the facts of the case, had come to a conclusion that the petitioners were paid less salary than what was given to similarly situated persons of another department of the government and as the Supreme Court came to the conclusion that there was a case of discrimination, the Hon'ble Supreme Court held that those who were working in Doordarshan were entitled to the same pay scale as their counterparts who were working in Film Division. It was not in dispute that in the said case that those who were compared with each other, were doing same type of work and they were not subordinate to each other.

33. Learned advocate Shri Raval has then cited a judgment delivered in the case of M.S. Pandya v. State of Gujarat & Ors., 1997(1) GLR 647. The said judgment pertains to librarians working in different institutions. This court, after considering the nature of work performed by the librarians, came to the conclusion that the librarians were doing same type of work and, therefore, they were entitled to same pay or same pay-scale. As stated hereinabove, in the case with which we are concerned, the nature of work and the cadres are different and therefore the judgment relied upon by the learned advocate would not help the petitioners.

34. Lastly, the learned advocate has relied upon the judgment delivered in the case of Bhagwati Prasad v. Delhi State Mineral Development Corporation, 1992(8) SLR 784, and has submitted that due to experience gained by the petitioners by performing their duties in the hospital, they should be given higher pay-scale. He has tried to compare his case with the case of a daily-wager who was ordered to be absorbed in regular cadre under the provisions of the Industrial Disputes Act by the Hon'ble Supreme Court of India. It is pertinent to note that in

the instant case, we are not concerned with daily wagers but we are concerned with trained nurses and midwives. As stated hereinabove, the basic qualification, which the petitioners and the nurses are having, is different. Simply because the petitioners have gained some experience after getting appointment as ANMs, by virtue of the additional experience, they cannot claim pay-scale of a higher cadre. It is well-known that because of having more experience an employee is given increments and the petitioners must be getting increments regularly. We, therefore, do not agree with the submission made by the learned advocate that the petitioners should be paid higher pay-scale as they have gained experience.

35. It has been incidentally submitted by the learned advocate for the petitioners that there is a post of Linen Keeper in each hospital and linen keepers get higher salary than the petitioners. According to him, the linen keepers spread bed-sheets and change pillow covers. According to his submission, persons looking after beds and pillow covers should not be paid more amount than those who look after human beings or patients. The said argument was immediately repelled by the learned AGP by submitting that function of the linen keeper is not to spread bed sheets but he is a person in charge of administration and he looks after stock of linens and is also concerned with procurement of linens and other things used by the hospital. According to him, in each hospital managed under the ESI scheme, there is one post of linen keeper. The post of the linen keeper is an administrative post. He invites tenders whenever any particular thing is required by the hospital. He looks after the stock, he distributes the stock purchased by the hospital to the concerned department and thus his function is not to spread bed sheets as submitted by learned advocate Shri Raval for the petitioners, but he is a person who looks after administration by virtue of the nature of his responsibilities. If a person who is looking after administration and he is getting more salary than the petitioners, in our opinion, we cannot find any fault with the system or pay-scale. Simply because somebody is looking after administrative work, it does not mean that he should get less salary than the one who look after human beings. The argument which has been advanced by the learned advocate for the petitioners does not sound just and proper and, therefore, we do not agree with the submission that the petitioners should get more salary than what is being given to linen keepers.

36. It has been submitted by the learned advocate for the petitioners that the course, which the petitioners

had undergone has now been discontinued and no new recruitment is being made in the cadre of ANMs. At present only staff nurses are being recruited. It has been, therefore, submitted by him that the post of the ANM or midwife should be treated equivalent to the post of staff nurse. The said argument is neither correct nor relevant. At present the hierarchy of nursing staff, as submitted by the learned A.G.P, under the ESI Scheme, is as under :

	Pay-scale	
	1975	1987
Nursing Superintendent	350-850	900-1500
Matron Class-II	350-700	650-1040
Asst. Matron	350-700	650-1040
Matron Class-III	250-480	475-750
Sister-in-charge	200-430	425-640
Staff nurse	200-340	380-560
Health Visitor	175-345	330-560
Nurse/Midwife	160-265	260-400

It is however true that now there is no recruitment in the cadre of the ANM but it is not true that the ANMs and the staff nurses are treated at par.

37. The learned advocate for the petitioners has submitted that one of the ANMs had filed Special Civil Application No. 3238/79 praying for similar relief and the said petition was allowed by this court. He has relied upon the judgment delivered in the said case dated 2.2.82. It has been submitted by the learned advocate that after the petition was decided in favour of the ANM, a review application was filed by persons who were in the cadre of staff nurse. The said review application was rejected. Being aggrieved by the order passed in the review as well as in the main petition, the government authorities had also filed a letters patent appeal, but the said appeal had also been summarily dismissed. It has been, therefore, submitted by the learned advocate

that the present petitioners should also be given benefit which was given to a particular ANM, who had approached this court in the past. It is pertinent to note that the petitioners in the said case was not appointed under the ESI scheme. The ESI Scheme, under which the present petitioners are performing their duties, were appointed somewhere in 1964 as the ESI Scheme came into force in 1964. The petitioner in Special Civil Application No. 3238/79 was appointed as an ANM by an order dated 26.6.1956 in the Directorate of Health and Medical Services. It could not be disputed by the learned advocate appearing for the petitioners that the petitioner in the said case was not appointed under the ESI Scheme and, therefore, the facts of the case of the said petitioner cannot be compared with the facts of the present petitioners. It may, however, be stated here that the said petitioner was subsequently transferred to a different department and it appears that she had also worked on the post of nurse in another directorate, namely, ayurved department. If, on the facts of the said case, the petitioner of Special Civil Application No. 3238/79 had been appointed or had worked on the post of staff nurse, one cannot dispute that the said petitioner was entitled to the salary of a staff nurse. In the instant case, the petitioners had never been appointed as staff nurses. Therefore, the judgment delivered in Special Civil Application No. 3238/79 would not render any assistance to the petitioners.

38. The learned AGP has referred to several judgments, but in our opinion, it is not necessary to refer to all those judgments. Suffice it to discuss some of the judgments explaining the legal position on the subject by the Hon'ble Supreme Court.

39. The learned AGP has relied upon the judgment delivered in the case of State of Tamil Nadu and anr. v. M.R. Alagappan & ors., 1997 SC 2006. The Hon'ble Supreme Court was concerned with the matter having similar facts. Deputy Agricultural Officers and Agricultural Officers in the State Agricultural Services were performing substantially similar duties. Agricultural officers were direct recruits and the qualification required for appointment to the post of agricultural officer was B.Sc. (Agri). So far as Deputy Agricultural Officers are concerned, they all were promotees. Initially, they were appointed in Tamil Nadu Agricultural Subordinate Service. The qualification required for being appointed in Tamil Nadu Agricultural Subordinate Service was SSLC and upon promotion they were appointed as Deputy Agricultural Officers. There was no

promotional avenue for Deputy Agricultural Officers. The duties performed by Deputy Agricultural Officers and Agricultural Offices were substantially similar though the Agricultural Officers were paid higher pay-scale than the Deputy Agricultural Officers. The case of the Deputy Agricultural ddOfficers was that they should be put into the pay-scale, which the Agricultural Officers were getting as they and the Agricultural Officers were performing practically same duties. Tamil Nadu Administrative Tribunal decided the matter in favour of the Deputy Agricultural Officers by holding that the Deputy Agricultural Officers were entitled to get the pay-scale, which was being given to Agricultural Officers, on the principle of 'equal pay for equal work.' The judgment delivered by the tribunal was quashed and set aside by the Hon'ble Supreme Court on the ground that the principle of 'equal pay for equal work' was wrongly invoked by the Tribunal for the reason that qualifications of persons working in both the cadres were different. AGricultural Officers were having higher qualification, whereas qualifications of promotee Deputy Agricultural Officers were lower. The Hon'ble Supreme Court observed that simply because they were doing similar type of work to a certain extent, the Deputy Agricultural Officers would not get a right to have higher pay-scale. After considering a judgment delivered in the case of State of Mysore v. P. Narasimgha Rao, AIR 1968 SC 349, the Hon'ble Supreme Court came to the conclusion that while fixing the pay-scale, one has to also consider the educational qualification of the persons holding the post. After considering other judgments delivered by the Hon'ble Supreme Court, the Supreme Court ultimately came to the conclusion that the Dy. Agricultural Officers were not entitled to the pay-scale, which was being given to the Agricultural Officers, who were better qualified. Thus, the principle of 'equal pay for equal work' is not the only principle, which one has to look at the time of determining the pay-scale. It is pertinent to note here that normally work with regard to fixation of pay-scale is done by the government employer only on the recommendations made by pay commissions. Pay Commission is an expert body, which considers all relevant factors, listens to the grievances of the concerned employees and after appreciating the nature of work done by the persons belonging to different cadres, suggests different pay-scales of persons working in different cadres.

40. The Hon'ble Supreme Court had also taken a similar view in the case of Chandigarh Administration v. Smt. Anita Sood & Ors., (1995) Supp. 3 SCC 613. The

Supreme Court was concerned with pay-scales of teachers in the said case. The Supreme Court ultimately came to the conclusion that classification on the basis of academic qualifications, experience, quality and standard of teaching methods etc. are the factors to be considered for fixing different pay-scales for different persons working in the field of teaching. Incidentally, the Hon'ble Supreme Court also observed in the said judgment that work of all teachers remain the same as they teach the students but that does not mean that all teachers, no matter at which level he is teaching, should get the same salary. If we agree with the submission made by the learned advocate appearing for the petitioners, the salary of a teacher teaching primary students and a teacher giving guidance to a student studying for Ph.D. should be the same. The Hon'ble Supreme Court did not agree with such a submission made before it and held that the pay-scale can be different in respect of those who are having different qualifications. The same logic would apply in the instant case. One can say that the work of a nurse, midwife, auxiliary nurse midwife, nurse of operation theatre etc. is same if you look from the angle of rendering service to an ailing person. They all render service to those who are ailing. We can also include a cadre of nurses to the said list but the fact remains that all persons do not get the same salary though their function is to help an ailing person. On the said analogy, in the instant case, higher pay-scale is being offered to the staff nurse or nurse, who is having higher educational qualification.

41. Learned advocate Shri Raval has also submitted that in certain letters/orders the petitioners were described differently. He has shown some letters wherein the petitioners have been addressed as nurses or midwives or by other designations. Simply by use of such a designation, the person, who has been addressed so, would not get higher status because the authority writing a letter to the person is more concerned with the substance or contents of the letter, which might be in the nature of direction, rather than the designation of the person to whom the letter is being addressed. The Hon'ble Supreme Court had an occasion to deal with such a situation in the case of Utkal University and another v. Jyotirmayee Nayak and others, (2003) 4 SCC 760. The Hon'ble Supreme Court was also concerned with the principle of equal pay for equal work. In the said case the Supreme Court observed that in absence of any appointment order appointing an employee on regular pay-scale, the concerned employee cannot claim a pay-scale or regular pay-scale which is admissible to a

similarly placed employee. It has been also observed by the Hon'ble Supreme Court in the said case that "a sentence here or there incorporated in the order addressed to the employee cannot be read in isolation so as to give a particular right to the employee.' Simply because in some of the orders or letters the petitioners were addressed as nurse or midwife, the petitioners would not become entitled to the salary payable to the nurse. One has to look at the substance of the order or letter rather than the designation used by the authority. If the letter is written in relation to pay-scale or pay fixation, one might give importance to the designation, but when instructions are issued with regard to performance some duty or duty hours etc., one need not look at the designation. Thus, looking to the law laid down by the Hon'ble Supreme Court in the case of Utkal University (supra), the submission made by the learned advocate for the petitioners that as the petitioners were addressed as "nurses", the petitioners are entitled to the salary payable to the nurse cannot be accepted.

42. Once we come to a conclusion that the qualifications of the petitioners and the staff nurse/nurse are different, we cannot direct the appellant government to pay higher pay-scale to the petitioners. As stated hereinabove, the petitioners are subordinate to staff nurse/nurse. As stated hereinabove, their function is to render assistance to the nurse. It is also pertinent to note that there is only one nurse in one hospital managed under the ESI scheme whereas there are several ANMs/midwives in a hospital to assist the nurse. In such a case, we cannot direct the government authorities to pay the same pay-scale to the person who is being assisted and the persons who are assisting the main person. Looking to the nature of work performed by the petitioners, it is also clear that they were subject to supervision by the staff nurse/nurse. Thus, they are subordinate to staff nurse/nurse and it would be absurd if the court gives any direction to the government authorities to give same pay-scale to subordinates and the superior officer under whom the subordinates work.

43. At this juncture it is important to note that the function of the court is not to fix the pay-scales. As stated hereinabove, the said function is to be done by an expert body. Even the Hon'ble Supreme Court has observed in several cases that the court should refrain itself from fixing pay-scale of the employees. The Supreme Court has held in the case of Government of Andhra Pradesh and another v. Hari Hara Prasad and others, AIR 2002 SC 3645, that under the discretionary jurisdiction

of the court, the court should not issue any writ of mandamus directing the government to have parity in pay-scale. The Supreme Court had set aside a judgment delivered by the High Court whereby a direction was given by the High Court for fixing higher pay-scale or for having parity in pay-scale.

44. Similar view was expressed by the Hon'ble Supreme Court in the case of State of Haryana v. Haryana Civil Secretariat Personal Staff Association, AIR 2002 SC 2589. The Supreme Court observed that pay fixation and the matter with regard to pay parity is a complex matter having far reaching impact on the state administration and, therefore, ordinarily a court should not interfere with such decisions. After considering judgments delivered by the Hon'ble Supreme Court in several cases, the Hon'ble Supreme Court made the following observations in relation to pay fixation in the judgment delivered in the case of Secretary, Finance Department v. West Bengal Registration Service Association, AIR 1992 SC 1203 :

> "matter which is best left to an expert body unless there is cogent material on record to come to a firm conclusion that a grave error had crept in while fixing the pay scale for a given post and court's interference is absolutely necessary to undo the injustice."

The Hon'ble Supreme Court also observed that "one should keep in mind that the claim of equal pay for equal work is not a fundamental right vested in any employee though it is a constitutional goal to be achieved by the Government. Fixation of pay and determination of parity in duties and responsibilities is a complex matter which is for the executive to discharge." Looking to the said fact, in our opinion, it would not be proper on our part to interfere with the pay-scales fixed by the government authorities and more particularly when we are satisfied that higher pay-scale is being offered to staff nurse/nurse on account of their having better qualification. We have already stated the reasons for which different pay-scales have been fixed by the government. We are very much in agreement with the submissions made by the learned AGP to the effect that the pay-scales of ANMs are less than the pay-scale of staff nurses/nurses for the reason that they render assistance to the staff nurses and they are subordinate to the staff nurses.

45. On the aforesaid grounds, we are unable to persuade ourselves to agree with the views expressed and

conclusions arrived at and the resultant ultimate order passed by the learned single Judge and, therefore, the impugned order cannot be sustained. The judgment in Special Civil Application No. 1351/82 dated 25.1.1995 passed by the learned single Judge deserves to be quashed and set aside.

For the foregoing reasons, the appeal succeeds and the impugned judgment and order passed by the learned single Judge is quashed and set aside. The appeal is disposed of as allowed with no order as to costs.

(A.R. Dave, J.)

(A.M.Kapadia, J.)

(hn)